

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

ALICE BRYANT

Plaintiff,

v.

Civil Action No. 3:13-cv-349-JAG

CAROLYN W. COLVIN,  
*Acting Commissioner of Social Security,*

Defendant.

**FINAL ORDER**

This matter comes before the Court on the plaintiff's Objections ("Objections") (Dk. No. 13) to the Magistrate Judge's Report and Recommendation ("R&R"). (Dk. No. 12.)

In her Objections, the plaintiff contends that the R&R "missed" the Administrative Law Judge's ("ALJ") Findings of Fact "specifically adopting, accepting, and crediting as true and accurate the fact that [the plaintiff] has 1 to 2 migraines per week." (Dk. No. 13 at 2.) To the contrary, the ALJ stated in his decision that he "gave Dr. Felton's assessment [related to the frequency of the plaintiff's migraines] limited weight" based on a lack of credible evidence. (R. at 22.) Taking this into account, the R&R stated that the ALJ "is only required to include those limitations that the ALJ considers credibly established" when considering the plaintiff's need for absences or unscheduled breaks. (R&R at 20.)

Thus, the R&R did not "miss" any facts, and this Court, upon *de novo* review, agrees that the ALJ did not accept as true that the plaintiff has one to two migraines per week, but rather questioned the credibility of that evidence when considering the plaintiff's limitations.

Having reviewed the Magistrate Judge's Report and Recommendation, the plaintiff's Objections, the defendant's Response to the Objections (Dk. No. 14), and the record, and finding no error therein, it is hereby ordered that:

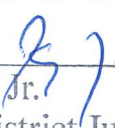
- (1) The plaintiff's objections to the Report and Recommendation of the Magistrate Judge are OVERRULED;
- (2) The Report and Recommendation of the Magistrate Judge (Dk. No. 12) is ADOPTED on the basis of the reasoning of the Report and Recommendation;
- (3) The plaintiff's Motion for Summary Judgment (Dk. No. 8) is DENIED;
- (4) The Commissioner's Motion for Summary Judgment (Dk. No. 10) is GRANTED;  
and
- (5) The Commissioner's decision denying benefits to the plaintiff is AFFIRMED.

It is further ORDERED that the issues are adequately addressed by the briefs and oral argument would not materially aid the decisional process.

It is so ORDERED.

Let the Clerk send a copy of this Order to all counsel of record.

Date: March 6, 2014  
Richmond, VA

/s/   
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John A. Gibney, Jr.  
United States District Judge